

**UNITED STATES OF AMERICA
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA

vs.

CHRISTOPHER ANDRADE

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Case No. 7:18-cr-001691-03

AMENDED MOTION FOR BRUTON SEVERANCE OR FOR ALTERNATIVE RELIEF

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant, Christopher Andrade, pursuant to Fed. R. Crim. P. 8, Fed. R. Crim. P. 14, the Sixth Amendment to the United States Constitution and other applicable rules, law and constitutional protections, hereby moves to sever the trial of Defendants Christopher Andrade and Ronaldo Gallegos, from the trial of the codefendant Viola Elizabeth Garcia, and alleges:

I.

1. A trial of Defendant separate from that of the codefendant is necessary to promote a fair determination of the guilt or innocence of Defendant. A separate trial is also necessary to protect Defendant's Confrontation Clause rights as guaranteed by the Sixth Amendment to the United States Constitution.
2. According to the Government's Discovery Responses to date, Defendant, Viola Elizabeth Garcia, made an incriminating statement against Defendants Christopher Andrade and Ronaldo Gallegos, after her arrest. The statement prejudices Defendants Christopher Andrade and Ronaldo Gallegos. Because of this, Defendant Christopher Andrade moves the Court to sever the trial of Defendant Viola Elizabeth Garcia from the trial of Defendants Christopher Andrade or Ronaldo Gallegos. Due to the circumstances of this case,

protective editing of the statements would not overcome the prejudice to Defendant Christopher Andrade.

3. Statements made by the nontestifying codefendant are not admissible against Defendant Christopher Andrade. *Bruton v. U.S.*, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968); *Schneble v. State*, 215 So. 2d 611 (Fla. 1968), judgment aff'd, 405 U.S. 427, 92 S. Ct. 1056, 31 L. Ed. 2d 340 (1972). A separate trial is therefore required.
4. The law is clear that the government has three alternatives from which to elect in any case in which it seeks to introduce the post arrest statement of a codefendant who elects to proceed to trial, and which statement directly or indirectly implicates the Defendant: (1) proceed to joint trial without use of the statement of the codefendant; (2) obtain a severance of the Defendant's case, or (3) redact the statement of the codefendant so as to delete the inculpatory remarks regarding the Defendant, if same can be done without prejudicing the codefendants. See *Bruton v. U.S.*, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968).
5. The Defendant's first request is for a severance. Defendant moves the court, however, that if the severance is denied, that this court require the Government to proceed to trial without said statement of the named codefendant. It is submitted that redaction of the codefendant's statements could not be made in a manner that would protect Defendant from prejudice at the trial of this case, and that therefore the entire statements must be excluded under *Bruton*.

II.

WHEREFORE, Defendant Christopher Andrade requests that this Court grant his foregoing motion, sever the trial in this cause so that said Defendant obtains a trial separate from that of codefendant Viola Elizabeth Garcia, and any other codefendants who have made incriminating post-arrest statements as to Defendant, or alternatively require the Government to

proceed to trial without introduction of the post-arrest statements of the codefendant(s) and that this court take all further action deemed just and proper.

Respectfully Submitted,

DE LA GARZA LAW FIRM

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CERTIFICATE OF SERVICE

This is to certify that on July 2, 2019, a true and correct copy of the above and foregoing document was e-filed via the CM/ECF system and served on all counsel of record.

By: /s/ Rafael de la Garza, III
RAFAEL DE LA GARZA
State Bar No. 24076343
Federal I.D. No. 1162772

DEFENSE COUNSEL FOR
CHRISTOPHER ANDRADE

CERTIFICATE OF CONSULTATION

I, RAFAEL DE LA GARZA, hereby certify that on July 1, 2019, I consulted with AUSA, Roberto Lopez, and counsel for co-defendants regarding this Amended Motion for Bruton Severance or for Alternative Relief, and they are unopposed to same.

By: /s/ Rafael de la Garza, III

RAFAEL DE LA GARZA

State Bar No. 24076343

Federal I.D. No. 1162772

DEFENSE COUNSEL FOR
CHRISTOPHER ANDRADE